

**AN ORDINANCE REQUIRING THE PAYMENT OF A LIVEABLE WAGE.**

WHEREAS, ACCORDING to the 1990 U.S. Census, 14.9% of the residents of the City of Durham live in poverty; and

WHEREAS, it is beneficial to the health and welfare of Durham's citizens to be paid a liveable wage which enables them to not live in poverty; and

WHEREAS, the City's economic development provides many benefits for citizens of Durham, one of which should be liveable wages for all working people; and

WHEREAS, this ordinance providing for a liveable wage is consistent with other programs operated by the City to meet the employment and economic development needs of persons of low and moderate income; and

WHEREAS, the City desires to use its authority to procure services in combination with its authority to pursue economic development;

WHEREAS, it is the purpose of this ordinance to provide for a liveable hourly wage rate for workers employed by vendors who are awarded service contracts by the City, and thus enhance the welfare of working citizens of Durham; now therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DURHAM:**

Section 1. This ordinance shall appear as Chapter 27 of the Code of the City of Durham, and shall be entitled, "Liveable Wage," with the text of the ordinance to appear as follows:

**Sec. 27-1. Service Contracts with the City.**

It shall be the policy of the City of Durham that all Service Contractors doing business with the City pay their workers an hourly wage while working on City Service Contracts such that, if annualized, a person working forty (40) hours per week will earn enough money to support a family of four above the poverty level, as poverty is defined by the Bureau of Census.

**Sec. 27-2. Definitions.**

As used in this chapter, the following terms have the meanings indicated, unless the context clearly requires a different meaning:

(a) **CITY COUNCIL:** the City Council of the City of Durham, North Carolina.

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(b) CITY MANAGER: the City Manager of the City of Durham, North Carolina, or his or her designee.

(c) LIVEABLE WAGE: the minimum hourly wage rate that shall be paid to those who work on Service Contracts with the City.

(d) PERSON: any individual, business entity, corporation, limited liability company (LLC), partnership or joint venture.

(e) SERVICE CONTRACT: a contract designated by the City Manager as a service contract subject to this ordinance. These shall include only those contracts for services to the City and its agencies which the City could provide for itself with its own employees, should it decide to do so, and shall not include contracts governed by State or Federal procurement or bidding requirements, or those where services are performed by non-profit, tax-exempt organizations. Notwithstanding the foregoing, the City Council may make a determination that a contract with a non-profit tax exempt organization is one for which the City could have provided the contracted service with its own employees, and that upon such determination the contract shall be subject to the provisions of this ordinance.

(f) SERVICE CONTRACTOR: the Person awarded a City Service Contract, specifically including all subcontractors of Service Contractors.

(g) SERVICE WORKER: any employee of a Service Contractor, as defined by the City Manager.

#### Sec. 27-3 Administration of the Liveable Wage.

(a) Each Service Contractor shall pay its employees working on City Service Contracts a Liveable Wage during those hours that the employees work on City Service Contracts.

(b) The City of Durham has determined that it is an important goal to ensure that employees of its Service Contractors earn a Liveable Wage, and has therefore made it mandatory that contractors bidding on City Service Contracts comply with this ordinance. In order to accomplish the statutory objectives of this ordinance, the City narrows its pool of eligible contractors, because some contractors will not be eligible for consideration for such contracts. Therefore, when a Service Contractor who has been awarded a City Service Contract subject to this ordinance fails to fulfill the requirements of this ordinance, the City suffers damages. The precise dollar amount of those damages is difficult to ascertain. Therefore, all Service Contracts falling under this ordinance shall include language in substantial conformance with the following paragraph:

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"In the event of a finding by the City Manager or a judicial officer that any Service Worker has been paid less than the compensation to which the Service Worker is entitled under the City's liveable wage ordinance, Contractor shall make restitution to the Service Worker for the amount due. Contractor shall also pay liquidated damages to the City in the amount of Fifty Dollars (\$50.00) per day for each employee so underpaid, provided, however, that these damages shall not be assessed for wage underpayment violations to any individual which amount to a total of less than One Dollar (\$1.00) in any payroll period. Should a Service Worker be found to have been discriminated against for seeking to enforce the provisions of the City's Liveable Wage ordinance, and if the Service Worker has been terminated from employment, he or she shall be reinstated upon an order to do so from the City Manager or a judicial officer. A flyer stating the City of Durham's Liveable Wage amount shall be posted at the workplace of every Service Contractor in a location easily seen by all employees."

(c) When a Service Contractor has been found to have failed to pay a Liveable Wage in the course of performing more than three separate Service Contracts in a two year period, the City Manager may prohibit that Service Contractor from participating in future Service Contracts for up to three years.

(d) Within one year from the date of work performed on a Service Contract, a Service Worker may file a protest in writing with the City Manager claiming that the amount of wages paid to that worker on that Service Contract was less than the Liveable Wage at the time the work was performed.

(e) A Service Contractor shall not discharge, reduce the compensation or otherwise discriminate against any Service Worker for seeking to enforce the provisions of this ordinance. Actions protected under this ordinance include, but are not limited to, making a complaint to the City Manager, participating in any City proceedings, or making use of any civil remedies. If any violation of this paragraph is found to have occurred, the City Manager may order appropriate restitution and the reinstatement of such Service Worker, in accordance with the terms of the Service Contract.

(f) The City may withhold or cause to be withheld from the Service Contractor so much of any accrued payments owed to the contractor as may be necessary to: (1) pay the Service Workers employed by the Service Contractor the full amount of wages required by the provisions of this ordinance; and (2) satisfy any liability of the contractor for liquidated damages accrued under the terms of the Service Contract. The City may also withhold payments from any Service Contractor who has failed to post and keep posted a copy of the Liveable Wage as required herein, until such default of the Service Contract's terms shall have been corrected.

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(g) The City Manager shall cause investigations to be made as may be necessary to determine whether there has been compliance with the provisions of this ordinance, the regulations promulgated thereunder, and those contained in the Service Contract. The Service Contractor shall permit representatives of the City to observe work being performed upon the work site, to interview Service Workers and to examine the books and records relating to the payrolls on the project being investigated to determine the correctness of classifications and any payment of proper regular and overtime rates as required. All such information provided by the Service Contractor will be treated as confidential, to the extent permitted by Chapter 132 of the North Carolina General Statutes, the Public Records Law, as it may be amended from time to time. Complaints of alleged violations shall be investigated promptly and statements, written or oral, made by a Service Worker shall be treated as confidential and shall not be disclosed to the Service Contractor without the consent of the Service Worker.

(h) If necessary for the enforcement of this heading, the City Manager may issue subpoenas, compel the attendance and testimony of witnesses and the production of books, papers, records, and documents relating to payroll records necessary for investigations and hearings. Any such subpoena shall be served by the sheriff of Durham County. In case of refusal to obey or fully comply with any such subpoena, the person not complying may be summoned before the General Court of Justice, and upon failure to give satisfactory explanation of such failure or refusal, the court shall find the failure to be a misdemeanor violating Section 19 of the Durham City Charter, such violation punishable by a fine not exceeding \$100 per day or imprisonment for a period not exceeding thirty (30) days. In addition, the General Court of Justice may issue any civil orders as may be within its jurisdiction in order to enforce subpoenas issued under this ordinance.

#### Sec. 27-4. Intentional Violation a Misdemeanor.

In the event the City Manager shall determine, after notice and hearing, that any Service Contractor has failed to pay the Liveable Wage or has otherwise violated the provisions of this heading and that such failure was intentional, no contract shall be awarded to such Service Contractor, or to any business in which such Service Contractor has an interest, until one year has elapsed from the date of such determination. Provided, further, that any such intentional violation of the provisions of this heading shall be a misdemeanor, punishable upon conviction by a fine of not more than Five Hundred (\$500.00). Proceedings before the City Manager shall not be considered a pre-condition to criminal prosecution under this heading. Each day's violation shall constitute a separate offense.

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Sec. 27-5. Setting the Liveable Wage Rate.

The Liveable Wage rate shall be the minimum hourly wage rate that is paid to City of Durham employees, as it may be revised from time to time by resolution of the City Council.

Sec. 27-6. Severability.

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or application of the chapter which can be given effect without the invalid provision or application; and to this end, the provisions of this chapter are severable.

Section 2. AND BE IT FURTHER ORDAINED, that this ordinance shall take effect for all Service Contracts entered into after February 1, 1998.

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APPROVED BY  
CITY COUNCIL

"JAN 20 1998

*D. Ann Gray*  
DEPUTY CITY CLERK

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